

Changes to Anti-Discrimination Law in Queensland

Why they matter to Faith-based Schools

Introduction

The Queensland Human Rights Commission, which is responsible for promoting human rights and responding to discrimination complaints, has published a large report recommending sweeping changes to Queensland's anti-discrimination laws. It is called *Building Belonging; Review of Queensland's Anti-Discrimination Law 1991* (July 2022). It is available [here](#).

Many of the proposed changes are sensible and update legislation that was originally written 20 years ago. However, the Commission largely ignored or rejected the concerns of Church leaders and other leaders of the Christian community in making its recommendations.

Among other things, its report recommends further limitations on the right of faith-based schools and tertiary institutions to organise themselves in a manner consistent with their beliefs and values.

In short, the Queensland Human Rights Commission proposes to **reduce further the religious freedom of parents in Queensland** to educate their children in accordance with their faith. The outcome of some of its reforms will be to make a Christian school almost indistinguishable from the State school down the road – undermining the very purpose of having a Christian school.

The staffing policies of faith-based schools

Faith-based schools exist in order to provide an alternative to a state school education. This gives parents a choice to provide an education to their children consistent with their faith and the values that are most important to them. Faith-based tertiary institutions also exist to give students a choice of a post-secondary school education informed by religious values and beliefs.

The right of parents to choose schools for their children which have a religious ethos, as an alternative to the local state school, is a human right recognised in international law. Examples are Article 13(3) of the Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 18(4) of the International Covenant on Civil and Political Rights. Australia is a signatory to these covenants.

For a school to be a Christian school, or a Jewish school, or an Islamic school as the case may be, it has long been regarded as important that it has staff who are committed to the faith and to its values. If the staff are selected without reference to religious belief, then it is hard to see how the education that the school provides is any different to the state schools, apart from having religious studies classes and the occasional religious service or assembly.

Christian schools differ in terms of their staffing policies. Some schools, including the Catholic school sector, just have a preference for staff who are active in their Christian faith or at least subscribe to Christian values. Other Christian schools have a policy that all staff should be

committed believers, on the basis that Christianity is “caught, not taught” and that Christian schools are meant to be Christian communities, not just places for children to learn maths and English.

The current position in Queensland law

You might think that a Christian school should have a legal right to appoint, or to prefer to appoint, teachers who share the faith and values of the school. Surely this is just like an environmental group that is entitled to choose staff who believe in climate change or a political party that is entitled to select staff who share the values and purpose of the party. All of these groups are formed around a particular set of values and beliefs.

In Queensland, environmental organisations can select staff who hold beliefs and values consistent with the purpose of the organisation. So can political parties; but not Christian schools.

Queensland already has some of the severest restrictions in the country on the right of Christian schools to select, or to prefer, teaching staff who share the faith of the school. Those limitations are contained in section 25 of the Anti-Discrimination Act 1991. Schools cannot take religious belief into account in hiring or managing staff unless it is a ‘genuine occupational requirement’ that the staff member adheres to that faith. Even still, the school can only take religious beliefs or values into account if the staff member, or the applicant for a position, acts in some public way contrary to the beliefs and values of the school.

This may be contrasted, for example, to NSW which has long respected the right of all independent schools to maintain their identity and values in who they select to work in their school.

It is difficult to see how current Queensland law is consistent with Australia’s international human rights obligations to protect the right of parents to choose schools that are religious in character and ethos. **The current law makes it very difficult for Christian schools and tertiary institutions to maintain their religious identity.**

However, at least the current law accepts that it can be a genuine occupational requirement for someone who wants to work in a faith-based school that the person shares the faith of the school. The law is still very restrictive; but it does at least accept that being a Christian might be a genuine occupational requirement for a maths or science teacher to teach in a Christian school.

What does the Queensland Human Rights Commission recommend?

The Queensland Human Rights Commission is under a duty to advance human rights, but its report **fails even to mention the specific right, in international law, of parents to choose a religious school for their children.** International covenants are quite emphatic in referring to the liberty of parents to ensure the education of their children in accordance with their own religious and moral values.

The overall effect of the Queensland Human Rights Commission’s recommendations is to further restrict the religious freedom of people in Queensland, contrary to the spirit and intent of international human rights law. This is because it proposes to take away even the very limited religious freedom that the law currently allows to faith-based schools in their selection of teaching

staff. Specifically, it wants amendments to forbid Christian schools from insisting that the science teacher be a Christian; or the maths teacher for that matter. It may be that the only teaching role in the school that will be reserved for Christians is that of the religious studies teacher or school chaplain, if its recommendations are fully accepted.

Jewish and Islamic schools will be subject to similar restrictions.

This is all in the name of ‘equality’, but it means that Christian, Jewish and Muslim parents, and people of other faiths as well, will not be treated equally to people who are not religious when it comes to respect for their human rights.

Other issues

Recommendation 15 of the report recommends that every single person or organisation in Queensland that has any obligations under the Anti-Discrimination Act should be under a positive legal duty to prevent discrimination. That may sound fair enough, but the report is silent on what it means in practice. What happens if there is a clash between the values of the organisation and a right asserted by someone under anti-discrimination laws?

Consider the example of gender incongruent teenagers. How should Christian schools respond pastorally to the quite large number of teenagers who are now claiming to be ‘trans’ ‘non-binary’ or ‘genderqueer’? For many adolescents, this will be a passing phase and it is likely to be relatively harmless; but teenagers could do irreparable harm to themselves if they go down the path of taking puberty blockers and cross-sex hormones, destroying their fertility, impairing their sexual function and becoming dependent for life on medication. Some teenagers manage to obtain these drugs over the internet.

There is a huge international controversy in the medical profession and the wider community about these issues. There are many young adults now, particularly young women, who bitterly regret the decisions that they or their parents made, on the advice of well-meaning doctors. At the time, they were convinced that they were ‘trans’. The schools bear a lot of responsibility for these tragic errors, because some teachers in state schools, and indeed some Education Departments, have been actively promoting unscientific beliefs in schools about sex and gender.

Christian schools should not be in a position where they have to do something, under this proposed positive legal duty, to recognise new gender identities and beliefs that, in their reasonable view, contradict both faith and science. They need to respond carefully and caringly to all students who express gender incongruence, but this is best managed without the law requiring them to do things which they consider are not in the best interests of the individual student or the school community as a whole.

The Queensland Human Rights Commission’s recommendations on gender identity are also a concern. It is not entirely clear what they recommend, because reforms will depend upon another review process currently under way; but it is a real possibility that as a result of the proposed reforms, schools will have to treat boys as girls if they say they are, and vice-versa. This could have all sorts of implications for schools. It is likely that any changes to the law will be particularly disadvantageous to teenage girls, and may put them at greater risk of harm.

How to respond?

At this stage, these are only proposals *to* the government, not *by* the government. However, the present government is likely to want to implement the recommendations of the Human Rights Commission unless it becomes aware of significant concern in the community.

The Attorney-General, the Hon Shannon Fentiman MP, is responsible for the legislation, so write to her; but also send copies to the Premier, the Hon Anastasia Palaszczuk and the Minister for Education, the Hon Grace Grace MP. Make sure your church leaders are also aware of the issues.

Queensland has long been a successful multicultural and multifaith society. It will only remain so if parents' rights are respected and differences of faith and belief accepted.

Parents and others concerned about these proposals may want to express their concerns by signing a [Parliamentary e-petition](#) established to protect Christian schools.

A handwritten signature in black ink, appearing to read 'P. Parkinson', is enclosed within a thin black rectangular border.

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